Where *A.* the firſt aſſailant flies, and the affray is interrupted, and *B.* the firſt aſſaulted purſues *A.* to kill him, and *A.* after his flight, on neceſſity of ſaving his life, kills *B.* it is but *ſe defendendo*; but when done altogether, without any interval of flight or parting, and *B.* gains the preſent advantage by his addreſs or courage to preclude flight of *A.* and then *A.* kills him, manſlaughter *Page* 483

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So

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Indictment, *quòd primo die* Maii, &c. *in quendam* B. *inſult. fecit, & ipſum verberavit*, and ſays not *adtunc & ibidem verberavit*, good; *vi & armis, day and place* named in beginning refer to all enſuing *acts*; but *contra* in felony, there muſt be *adtunc & ibidem* to the ſtroke, or the robbery, &c. and day and place of aſſault inſufficient ib

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Uſual to repeat *adtunc & ibidem* to the ſeveral parts of fact charged ii. 178, 180

Regularly *vill, or hamlet and county* muſt be expreſt ii. 180

Where time muſt be repeated, regularly, place muſt be ſo too ii. *Page* 180

Suff. in the margin, indictment ſuppoſing fact to be done *apud* S. *in com. præd.* ſufficient; but *contra*, if another county be mentioned in the addition of any party, &c. ib

Indictment not aided by verdict; none of the ſtatutes of jeofails extends to them ii. 183, 193

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Indictment of felony muſt alledge fact to be done *felonicè*, of treaſon *proditoriè*, of petit treaſon, *felonicè & proditoriè* 59. ii 184, 187

Felony or treaſon at common law was laid to be done *vi & armis*, but now unneceſſary by ſtatute 187

So are the words *gladiis, baculis & cultellis* ib

Regularly every indictment ought to conclude *contra pacem*, but need not conclude *contra coronam & dignitatem ejus* ii. 188

Concluding *contra pacem*, and ſaith not *domini regis*, is inſufficient ib

Why indictments conclude *contra pacem*, &c. 130

For offenſe ſuppoſed to be committed in time of former *king*, and concludes *contra pacem regis nunc*, nought ii. 188, 189

One indicted in time of one *king contra formam domini regis nunc*, may be arraigned for that offenſe in the time of his ſucceſſor ii. 189

Indictment not diſcontinued by demiſe of the *king* ib

If the offenſe be ſuppoſed to be begun in the time of one *king*, and continued in the time of his ſucceſſor, it muſt conclude *contra pacem* of both kings ib

If an offenſe be alledged in the time of one *king*, and indictment taken in the reign of the ſucceeding *king*, and concludes *contra pacem nuper regis, & regis nunc*, good;

good; *regis nunc* ſurpluſage ii. *Page* 189
Where indictments ſhall conclude *contra formam ſtatuti*, or *ſtatutorum*, or not, and where only ſurpluſage 468, 561, 667. ii. 189 to 194
If an offenſe be at common law, and alſo prohibited by ſtatute with a corporal, or other penalty, party may be indicted at common law; and if it conclude not *contra formam ſtat.* it ſtands only as indictment at common law, and he can receive only the penalty the common law inflicts ii. 191, 192
Great ſtrictneſſes required in indictments, the reproach of the law, *&c.* ii. 193
Rare to take any exceptions to indictments before conviction, ſave on indictments removed into *B. R.* by *certiorari*, which *B. R.* may in diſcretion hear or not hear, but remand priſoner and indictment ii. 237
If exceptions to an indictment appear material, court can quaſh that, and direct a new bill to be ſent to grand jury, wherein faults may be amended, and priſoner arraigned *de novo* ib
One attaint by outlawry ſhall not be indicted till outlawry reverſed ii. 252
For what cauſes indictments abated. Vide **Abatement.**
Where beſt to arraign priſoner on indictment, or coroner's inqueſt, or both, and for other matters. Vide **Arraignment.**
Where offender indictable. Vide **County.**
What evidence maintains indictment. Vide **Evidence.**
What the quality of indictors. Vide **Jury.**
For indictments in leets and torns. Vide **Leet, Sheriff.**

Infant.

Wherein the *civil* and *common law* agree, or differ with reſpect to the full age of a man *for making contracts, being a procurator or executor, or conſenting to marriage* *Page* 17, 28
As to crimes, into what periods *civil law* diſtinguiſheth the ages, and at what age it preſumeth men *capaces doli*, or not 18, 19, 20
Both civil and common law leave the queſtion, whether party *capax doli*, or not, *ad arbitrium judicis* on the circumſtances, and with what caution 18
By common law, as to offenſes not capital, in ſome caſes infant is privileged by his non-age; and herein privilege is all one, whether above fourteen or under, if he be under twenty-one years; but with ſome and what differences 20
Infant convict of riot, *&c.* ſhall be fined and impriſoned, and not be privileged barely becauſe under twenty-one; but court *ex officio* on his trial ought to examine, whether he is *doli capax*, and had diſcretion to do the *act* wherewith he is charged ib
But if offenſe charged be a mere non-feaſance, (unleſs of ſuch a thing as he is bound by tenure, or the like to do, as to repair a bridge, *&c.*) there in ſome caſes he ſhall be privileged by his non-age, if under twenty-one, tho above fourteen; becauſe *laches* in ſuch caſe ſhall not be imputed to him ib
If infant in *aſſiſe* vouch a record, and fail at the day, he ſhall not be impriſoned; and yet *Weſtm.* 2. that gives impriſonment in ſuch caſe, is general ib
If *A.* kills *B.* and *C.* and *D.* are preſent, and attach not offender, they ſhall be fined and impriſoned; but if *C.* within twenty-one, he ſhall not 21. ii. 75
Where corporal puniſhment is but collateral, and not direct intention of proceeding againſt infant for his miſdemeanor, there in many

many caſes infant under twenty-one ſhall be ſpared, tho poſſibly puniſhment by ſtatute *Page* 21. ii. 75

If infant of eighteen be convict of *diſſeiſin* with force, he ſhall not be impriſoned, and yet *feme covert* ſhall ib

If infant be convict in action of treſpaſs *vi & armis*, the entry ſhall be *nihil de fine, ſed pardonatur, quia infans*; if a *capiatur* be entered, it is error, for it appears judicially, to court, that he was within age, when he appears by guardian, nor ſhall he be *in miſericordiâ pro falſo clamore* ib

General ſtatutes, that give corporal puniſhment, extend not to infants ib

But where a fact is made felony or treaſon, it extends as well to infants, if above fourteen, as others 21, 22

Civil law uncertain in defining *ætas pubertati proxima*; but laws of *England*, antiently determined it to be twelve years for both ſexes; under that age none could regularly be guilty of a capital offenſe, and above that age he might, or not, according to circumſtances, that might induce court or jury to judge him *doli capax, vel incapax* 22, 23, 24, 515

Infant of twelve compellible to take oath of alligeance 23

Againſt infant under twelve proceſs of outlawry on indictment was not awardable; and if awarded, error; but if above that age, ſuch proceſs was awardable 23, 24

If infant under twenty-one ſhall confeſs indictment, court ought not to record it, but put him to plead *not guilty*, or at leaſt inquire by inqueſt of office of truth of fact 24, 27, 491, 492

How the law now is with reſpect to infants and their puniſhments 25 to 29

Infant above fourteen and under twenty-one is equally ſubject to corporal puniſhments, as well as others of full age, for it is *præſumptio juris*, that after fourteen they are *doli capaces* *Page* 25

A lad of ſixteen convict of ſucceſſive wilful burning three dwelling-houſes, *&c.* had judgment to die, and was executed ib

Fourteen years common ſtandard, at which both males and females are ſubject to capital puniſhments for offenſes committed by them at any time after that age 25, 26, 28

Infant under fourteen, and above twelve, is not *primâ facie* preſumed *doli capax*, and therefore regularly for a capital offenſe committed under fourteen is not to be convicted, but may be found *not guilty*, or jury may find ſpecially, and how; in which caſe court ought to diſcharge him, becauſe no felony 26 to 29

Yet if it appear to the court that he was *doli capax*, when offenſe committed, he may be convicted and ſuffer death, tho he hath not attained *annum pubertatis, viz.* fourteen 26, 434, 569, 570

Infant [ten years old] that had killed his companion, and hid himſelf, hanged; *malitia ſupplet ætatem* 26

A girl of thirteen burnt for petit treaſon ib

If infant be above ſeven, and under twelve, and commit a felony, he is *primâ facie* to be judged *not guilty*, and found ſo, becauſe ſuppoſed not of diſcretion to judge between good and evil; yet in that caſe, if it appear by pregnant evidence that he had ſuch diſcretion, judgment of death may be given againſt him 26, 27

Infant of nine killed infant of like age, he confeſt felony, and on ex-

examination found he hid the blood and body; held he ought to be hanged *Page* 27
Circumſtances to be inquired of by jury ib
If convict, court cannot *ex officio* diſcharge infant ib
If infant be *infra ætatem infantiæ*, *viz.* ſeven years, he cannot be guilty of felony, whatever circumſtances proving diſcretion may appear, for *ex præſumptione juris* he cannot have diſcretion and no averment ſhall be received againſt it 27, 28
As to matters of crime, females have ſame privilege of non-age, as males 28
If infant be firſt arraigned and acquitted on indictment of murder by grand inqueſt, he may plead that acquittal on arraignment on coroner's inqueſt, and that will diſcharge him 28, 29
Infant under fourteen preſumed unable to commit a rape, but preſent and aſſiſting therein may be a principal 630
Act making offenſe felony binds not one under fourteen 706

Informations.

11 *H.* 7. gave power to proceed in all penal ſtatutes by information before juſtices of *aſſiſe* and peace, treaſon, murder, and felony excepted ii. 151*
Ill uſe being made of it, repealed ib
Tho informations are often practiſed in the crown-office in caſes criminal, and by many penal *acts* the proſecution is by the *acts* themſelves to be by bill, plaint, information, or indictment, yet proſecution in capital caſes is ſtill to be by indictment; except in caſes excepted, which ſee ii. 156 to 152*
In all criminal cauſes the moſt regular and ſafe way, and moſt conſonant to *magna charta*, is by preſentment or indictment, of twelve ſworn men ii. *Page* 151*
37 *H.* 8. for curing omiſſion of the words *vi & armis*, *gladiis*, *&c.* in indictments, extends not to informations ii. 187

Inqueſt of Office.

If jury find one, whom they acquit of treaſon or felony, fled; they muſt inquire what goods he had; but this only an inqueſt of office, and traverſable by party, or thoſe who have the goods 362 414, 493. ii. 154, 301
Where in caſe of inqueſt of office jurors not finding according to evidence have been fined ii. 311
Where court may inquire ex officio, *whether priſoner be of years of diſcretion.* Vide Infant.
Whether he be compos mentis. Vide Idiot, &c.
Where one ſtands mute ex viſitatione Dei, *or* ex malitiâ. Vide Mute.
Vide Coroner *per totum.*

Inquiſition of Death. Vide Coroner, Felo de ſe.

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To be tried by circumſtances 229 429, 508, 509
In caſes of larciny what are circumſtances evidencing a felonious intent 509
Antiently, tho not now, *voluntas reputabatur pro facto* 532
If primary intention be to beat, tho killing may be the effect, yet it is not ſuch felonious intent as makes burglary 561

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Of the laws *there* of treaſon 147
Ceſſing of ſoldiers expounded; treaſon by 18 *H.* 6. ib.
It was chief treaſon charged on *earl of Strafford king*'s lieutenant *there*, what his defenſe ib

By

By 10 *H.* 7. in *Ireland (Poining's law)* all ſtatutes of *England* are enacted to be obſerved *there* *Page* 147

25 *E.* 3. declaring treaſons, and 1 *H.* 4. enacting, that nothing ſhall be treaſon, but what is within that *act*, treaſons enacted *there tempore H.* 6. and afterwards before 10 *H.* 7. ſeem not to be repealed ib

General introduction of ſtatutes of *England*, being an affirmative law cannot be intended to take away thoſe *acts*, which were made in *Ireland* for declaring treaſon, as 18 *H.* 6. ib

Act for *earl of Strafford*'s attainder juſtly repealed, and why ib

Tho part of the dominions, yet no part of the realm of *England* nor *infra quatuor maria* 155, 317, 693

Ireland hath ſame laws for treaſon that *England*, and ſome more, yet for treaſon in *Ireland* offender may be tried in *England* by 35 *H.* 8. 155

A *peer* there tried *here* for treaſon by a common jury 155, 317, 693

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There may be reaſons not only in policy, but juſtice, ſometimes for a parliament to vary the puniſhment of crimes, in ſubſtance the ſame, when differenced by circumſtances 270

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But if acceſſary, whether *before* or *after*, be a ſtranger, judgment, ſhall be *quòd ſuſpendatur*, *&c.* 382

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Judgment in all caſes of *felony*, *quòd ſuſpendatur per collum, quouſque mortuus fuerit* ii. 399

What judgment by *Weſtm*: 1. *in miſpriſion of felony*, if concealer an officer, as ſheriff, &c. or if a common perſon *Page* 374, 375

If jury in caſe of indictment for *murder* or *manſlaughter*, find the *homicide* to have been *involuntary*, & *ſic*, &c. court may give judgment againſt concluſion of verdict, as that the fact is *manſlaughter*, tho verdict conclude *per infortunium*, or *ſe defendendo* 471

Where thief is killed of neceſſity in purſuit, if ſpecial matter be found, the killer ſhall have judgment, *quod eat inde ſine die*, becauſe it is no felony, nor cauſeth any forfeiture, ſo much as of goods, and ſo differs from *ſe defendendo*, or *per infortunium* as to forfeiture of goods ii. 304

One indicted of *homicide ſe defendendo*, or *per infortunium* muſt plead to it, or confeſs it, and no other judgment, but *rewittitur priſonæ*, or he is bailed *ad expectandam gratiam regis* ii. 395

If one by coroner's inqueſt be found to have killed a thief aſſaulting to rob him, &c. he ſhall not be arraigned on that indictment, but be diſmiſt without any judgment ib

If one be indicted of *murder* or *manſlaughter*, and on *not guilty* ſpecial matter is found, judgment is, *quòd eat inde quietus*, which is a perpetual bar; but if found guilty *ſe defendendo*, judgment is, *quòd expectet gratiam regis* ii. 395

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How judgment in caſe of *allowance of clergy* entered ii. 395

How a *peer* muſt aver his peerage, and pray benefit of 1 *E.* 6. and how judgment for his deliverance ſhall be entered ii. 396

If it be alledged that priſoner is a clerk in orders, how judgment ſhall be entered after his reading; and the like, if he plead *king*'s pardon of burning in the hand ii. *Page* 396

If a *layman* pray his clergy, and it appear on record that he had it before, how the entry is ib

And ſo if he prays his *clergy*, and cannot read ib

Where judgment on *acquittal* is only *quòd eat inde ſine die*, and there is defect in indictment, it ſhall be ſuppoſed to be given on that defect ii. 248

Judgment of *eat inde ſine die*, general and ſpecial ii. 392

In *covenant* a ſpecial verdict is found, and on peruſal of declaration a fault therein appears, how judgment ſhall be, ſo as not to be a bar in another action ii. 393

If given generally, it ſhall be intended on verdict and merits ib

In a *quare impedit* by the *king* iſſue is joined, and found for defendant, it is alledged in arreſt of judgment that no patron is named in the writ, judgment ſhall be entered generally, *quòd eat inde ſine die*, and not ſpecially on plea in abatement; but it ſhall not bar the *king* in a new action, for the *eat ſine die* ſhall be applied to the plea to the writ ib

If one plead in bar to indictment yet if indictment inſufficient, whether *eat ſine die* ſhall be applied to inſufficiency of indictment, or to plea in bar ib

Fit to have the *eat ſine die* ſpecial in that caſe, and how ib

If one plead *not guilty*, and be acquitted, judgment is not only *quòd eat inde ſine die*, but *ideo conſideratum eſt*, *quòd eat inde quietus*, tho at *king*'s ſuit ii. 394

If entry be *quòd eat inde quietus*, priſoner cannot be arraigned again, tho indictment inſufficient, till judgment of acquittal reverſed,

reverſed, becauſe it muſt go to matter of the verdict ii. *Page* 394, 395

Where priſoner excepts to inſufficiency of indictment, or court doth it *ex officio*, how judgment to be ib

Judgment on *auterfoits acquit convict* or *attaint*, and confeſſion by *king*'s attorney, how to be entered ii. 392

How judgment entered on *plea of pardon*, and how *allowance* thereof entered in the margin ii. 391 392

One outlawed of *felony or treaſon*, tho no other judgment but *utlegatum eſt per judicium coronatorum* is of itſelf an attainder, and ſubjects offender to ſuch award thereon to be made by court, as is ſuitable to the offenſe ii. 399

Judgment *quòd ſuſpendatur*, &c. to be given, as well againſt a *peer*, as another, in caſe of *felony*, and cannot otherwiſe be given by court, or executed by ſheriff ib

Tho judgment regularly againſt the *king* is *falvo jure regis*, yet *contra* in caſe of life ii. 247

Former *acquittal by judgment* not only a bar of new indictment for ſame offenſe; but if party is indicted *de novo*, and outlawed thereon, he may aſſign his former *acquittal* for error in that outlawry, and reverſe it for that cauſe, and in that caſe how judgment to be ii. 243, 244

Theſe words, *Eyt judgement de vy & member* in an *act* create a felony 627, 641, 703

Court may reſpite judgment on *acquittal*, if againſt full evidence ii. 310

In *England* law more determinate than in other places, and leaves as little as may, to *arbitrium judicis* 13

It doth not allow an arbitrary power to the judge to change puniſhment law inflicts 19

Thorp, C. J. was ſentenced to death before ſpecial commiſſioners aſſigned *ad judicandum ſecundum voluntatem regis*, in reſpect of the oath made by him to the *king* and broken, whereby he had bound himſelf to that forfeiture, that judgment was affirmed in parliament, but with what caution to prevent ſuch arbitrary courſe of proceeding for the future *Page* 262, 263

One indicted of *arſon* pleaded *not guilty*, and a ſpecial verdict was found, and ſpecial matter adjudged, no felony; yet on ſame indictment priſoner adjudged to the pillory; *ſed quære* ii. 172

One indicted of felony before juſtices of *oyer* and *terminer*, &c. is convict, if record of conviction and priſoner be removed into *B. R. B. R.* may give judgment thereon, but what to be done previouſly thereto ii. 401, 404

No other remedy before 11 *H.* 6. & 1 *E.* 6. for judgment to be given on perſons reprieved before judgment 401

Where priſoner hath not always from his arraignment remained in cuſtody of court, where he firſt had judgment, but is brought in by *cap.* by ſheriff, he ſhall not be eſtopped from ſaying *he is another perſon*, and iſſue may be taken thereon, and ſhall be tried before execution awarded; and if he ſtand *mute*, it ſhall be enquired *ex officio*, whether of malice ii. 402, 407

But *contra*, if in cuſtody of ſame court from his firſt arraignment, or if he had been bailed, and came in and rendered ib

Where party outlawed or abjured comes by proceſs into *B. R.* he ſhall be demanded what he can ſay why execution ſhould not be awarded on record removed; and if he confeſs himſelf, *ſame perſon*

perſon, execution ſhall be awarded ii. *Page* 402, 407
By 14 *H.* 6. juſtices of *niſi prius* on tranſcript of record have power to give judgment and award execution; but then priſoner muſt be ſent by *habeas corpus* to ſheriff of county, where *niſi prius* is, or elſe ſhall be bailed to appear *there* ii. 403, 404
But they may return *poſtea* into *B. R.* and there judgment may be given, as at common law ii. 404
In what caſes execution ſhall not be awarded without demanding what priſoner has to ſay againſt it ii. 401, 407, 408
Form of award of execution in *B. R.* ii. 409, 411

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Juriſdiction.

Where temporal judge may incidently take notice, whether a tenet be *hereſy*, or not 400, 407 408
Interpretation of a ſtatute belongs to common law 408
Juſtices of *C. B.* cannot hold plea on indictment or appeal in capital cauſes 498
Where proceedings of judges in capitals without ſtrict extent of their commiſſion, or where their commiſſion happens to be determined, are great miſpriſions 498, 499
Altho felony be limited to ſpecial juriſdiction, yet miſpriſion of it may be tried by a common jury and before general commiſſioners of *oyer* and *terminer* 653
A juſtice of peace of county where fact done, cannot in foreign county do any *act* of juriſdiction, as impriſon, but what he may do *Page* 581. ii. 50, 51

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Jury.

Grand Jury.

Special proviſion made for quality of indictors in *Lancaſhire* 286 ii. 52*
So in caſes of murders, *&c.* committed in *king*'s palace ii. 53*
Of grand inqueſts before juſtices in *Eyre* ib.
On ſummons of a ſeſſion of the peace, form of precept for return of grand jury; a *ſcire facias* alſo iſſues to all coroners, conſtables, *&c.* to be there at that day 154*
According to others, a *venire facias* iſſues to ſummon grand jury, *Vide* the form ib
On commiſſions of *oyer* and *terminer*, or *gaol-delivery*, form of like *venire* ib
On this precept ſheriff returns twenty-four or more out of whole county, *viz.* a competent number out of every hundred, out of which grand inqueſt of ſeſſions of peace, *oyer* and *terminer*, or *gaol-delivery* are taken and ſworn *ad inquirendum, &c.* not as antiently in *Eyre*, which was a kind of grand inqueſt out of every hundred ib
In ſome counties which conſiſt of gildable and ſuch franchiſe, where antiently ſeveral juſtices of *gaol-delivery* ſat, as in *Suffolk*, there are two grand juries, one for the gildable, another for the franchiſe ib
Indictors to be *probi & legales homines*, and muſt be ſo returned;

and this holds, as well in coroner's inqueſts, as other indictments or preſentments ii. *Page* 155*, 167

If any of them be outlawed, tho in a perſonal action, it is pleadable in avoidance of indictment 303. ii. 155*

Who not *probi & legales homines*; where one is not *legalis homo*, tho twelve beſide without exception, indictment may be quaſhed by plea ii. 155*, 167

They muſt be *king*'s *liege* people ii. 155*

And muſt be returned by ſheriff or bailiffs of franchiſes, without nomination of any, ſave by ſworn bailiffs ib

All indictments taken contrary, void ib

What freehold indictors ought to have ib

By ſtatute how juſtices of *gaol-delivery*, or peace, (one of *quorum*) in open ſeſſions may reform pannel of grand jury ii. 36, 155*, 156*

Grand jury ſworn firſt day commonly ſerves whole ſeſſions of peace, *&c.* yet court may grant another grand inqueſt to be returned and ſworn, and in what that may be ii. 156*

If on record it appear that grand inqueſt was returned after firſt day of ſeſſions, unleſs adjournment be entered on record, it is erroneous ib

By ſtatute grand inqueſt may be impannelled to inquire of concealment of another grand inqueſt, and tho it mentions only a grand inqueſt to be returned by juſtices of peace, yet it extends to *B. R.* and poſſibly to ſeſſions of *oyer* and *terminer*, and *gaol-delivery*; tho that can rarely come in queſtion, becauſe ſeſſions of peace ordinarily accompany thoſe commiſſions ii. 156, 157, 160

This proper way of puniſhing grand inqueſt, if they refuſe to preſent ſuch things as are within their charge ii. *Page* 157

Grand inqueſt before juſtices of *gaol-delivery*, *&c.* ought only to hear evidence for the *king*, and in caſe of probable evidence ought to find the bill, and why, *(ſed quære)* ib

Where they may return the bill *ignoramus* ib

If it appear that *A.* was killed by *B.* and a bill of murder be preſented, regularly they ought to find the bill for murder, and not for manſlaughter, *&c.* and why 491, 492. ii. 158

If a bill be againſt one for murder, and grand inqueſt on evidence before them, or their own knowledge be ſatisfied, that it is but *per infortunium* or *ſe defendendo*, and accordingly return bill ſpecially, court may remand them to conſider better of it, or hear evidence at the bar, and accordingly direct grand inqueſt ii. 158

A judge blamed for fining grand inqueſt for ſuch a return ib

If a bill be for murder, and it doth *conſtare de perſonâ occidentis*, whether they can find bill for manſlaughter, and *ignoramus* for the murder, and whether court be bound to receive ſuch a return ii. 158 to 162

Whether they can be fined for ſuch a return ib

If evidence to grand inqueſt be given at the bar on indictment in *B. R.* and grand inqueſt will not find a bill according to direction of that court, in what inſtance they are fineable ib

If juſtices of *oyer* and *terminer*, or *gaol delivery*, having heard evidence at bar, grand inqueſt will not find according to their directions, juſtices may bind them over to appear in *B. R.* and on information againſt them, they may be fined, *(ſed quære)* ii. 160

Fines ſet on them by juſtices of peace, *oyer* and *terminer*, and gaol-

gaol-delivery for concealments or non-preſentments in any other manner than that preſcribed by 3 *H.* 7. not warrantably by law ii. *Page* 160

Progreſs of fines ſet on juries, firſt on grand inqueſts, then on petit juries for not finding according to direction of court, and then on jurors, in civil cauſes for not finding in point of fact according to court's direction ii. 160, 311

Objections againſt ſetting ſuch fines ii. 160, 161

Grand jury ſworn to keep *king*'s council undiſcovered; diſcloſing whereof was formerly felony, which is now only fineable ii. 161

If thirteen or more be of grand inqueſt, a preſentment by leſs than twelve ought not to be; but if there be twelve aſſenting, tho ſome of the reſt of their number diſſent, it is a good preſentment ib

But on trial by petit jury, it can be by no more or leſs than twelve, and all aſſenting to the verdict ib

If preſentment be delivered into a court of ſeſſions and received, no averment lies, that it was not aſſented to by twelve ii. 162

Contra, in caſe of preſentment by a leet, for party diſtrained may ſo aver ib

Why indictors preſumed to be indifferent ib

A good exception, that one procured himſelf to be returned on grand inqueſt ib

If bill be for murder, and they return it *billa vera quoad* manſlaughter, and *ignoramus quoad* murder, what words it is uſual to ſtrike out in preſence of grand jury, and ſo to receive bill ib

What ſafeſt way with reſpect to this and like caſes ib

Indorſement makes not indictment, but bill affirmed ib

Difference between preſentment by grand jury of county and a liberty ii. 167, 168

Indictment of *aliens* to be by grand inqueſt of *Engliſh* ii. *Page* 271

In what county party indictable. Vide County.

Vide Indictment, Preſentment.

Petit Jury.

By 27 *Eliz.* precedent of *commiſſion to give judgment without trial by jury* primæ impreſſionis 336

In dubiis rather to incline to acquittal than conviction; caution againſt the wit and invention of accuſers, and odiouſneſs of the accuſed 87, 300, 509, 636

Not to be tranſported with heinouſneſs of the offenſe 636

Uſually at ſame ſeſſions the ſeveral indictments againſt ſame perſons tried by ſame jury 545

Jurors triers of credit of witneſſes, as well as truth of fact 635. ii. 235, 276, 277, 313

After *not guilty* received and recorded, ſheriff returns pannel of jury ii. 293

Oath of jury ib

The form of charge given by clerk to jury; containing the effect of their inquiry ii. 294

Tho there be twenty priſoners at the bar for ſeveral felonies, and the oath is general to try between *king* and priſoner at the bar, yet jury to inquire of no more than what particularly charged with; and tho twenty have pleaded and ſtand at the bar, when jury is ſworn, yet court may ſtay at any number, and jury ſtand charged with no more ib

When they go from the bar, and have brought in their verdict, then if ſame jury paſs on the remaining priſoners, yet they are to be called over again, and reminded of their challenges, and jury ſworn *de novo* on their trial ib

By antient law, if jury ſworn had been once particularly charged with a priſoner, it was commonly held they muſt give up their verdict, and they could not be diſcharged before ii. *Page* 294

Yet contrary courſe hath long obtained ii. 295

Where court may diſcharge jury ſworn, and charged to try one *non compos* 35

If after jury ſworn and departed from bar, one wilfully goes out of Town, the eleven cannot give any verdict without the twelfth; but twelfth ſhall be fined for his contempt; and that jury may be diſcharged, and new jury ſworn, and new evidence given, and verdict taken of new jury ii. 295, 296, 309

If a jury be charged with ſeveral priſoners, and court finds jury partial to one, court may diſcharge jury of that priſoner, and put him on his trial by another jury ii. 296

Twelve ſworn to try the iſſue; after departure *A.* one of them leaves his companions; by conſent of all parties *B.* another of the pannel is ſworn in *A*'s place, *A.* returns, and being examined, *why he departed*, anſwered to *drink*, and denied, on oath, that he had ſpoken with defendant; whereon *B.* was diſcharged, and verdict taken of *A.* and the other eleven, and *A.* fined for contempt ib

If thirteen be ſworn by miſtake, ſwearing of laſt is void, and the other twelve ſhall ſerve ib

No verdict can be taken of leſs than twelve, and it is error; and ſo in a preſentment; but if twelve be recorded ſworn, no averment lies that one was unſworn ib

Court at common law may on juſt cauſe remove a juror after ſworn ib

When jurors depart from the bar, a bailiff ought to be ſworn to keep them together, and not to ſuffer any to ſpeak with them ii. *Page* 296

After their departure they may hear one of the witneſſes again in open court, and may deſire to propound a *queſtion* to the court for their ſatisfaction; and it ſhall be granted, ſo it be in open court; but if otherwiſe, this appearing by examination in court, and indorſed on *poſtea* will avoid the verdict ii. 296, 307

If they agree not before departure of juſtices of *gaol-delivery*, they muſt be conveyed along in carts, and judge may take and record their verdict in a foreign county; *quære*, whether in ſuch caſes, the ſeſſion may be adjourned before verdict taken ib

If there be eleven agreed, and but one diſſenting, who ſays he will rather die in priſon than conſent, yet verdict ſhall not be taken by eleven, nor refuſer fined or impriſoned ib

For moſt part in *Eyre* petit jury were all of ſame hundred where offenſe done; but now jury that tries, as well as inquires is generally of reſt of county ii. 301

Any of the jury eating or drinking before they have given up their verdict, fineable ii. 297, 306

But antiently, if at charges of either party, verdict ſet aſide, but not ſo now ib

If at charges of priſoner, afterwards found guilty, verdict ſtands ib

But if they acquit him, judge before whom verdict given, may record ſpecial matter, and thereon verdict ſhall be ſet aſide, and a new trial granted ib

A juryman, who hath a piece of evidence in his pocket, and after jury ſworn and gone together, ſhews it to them, is fineable; but verdict not avoided, tho caſe appears on examination ii. 306, 307

But if, after jury ſworn, either party deliver a piece of evidence to jury, and verdict is given for him, it ſhall avoid it; but then it muſt appear by examination, which muſt be indorſed on *poſtea* or verdict, ſo as it appear of record, and not barely by *affidavit*, made after; but if verdict be given againſt him that delivered the evidence, it is good ii. *Page* 307

If a piece of evidence under ſeal be read in court, jury ought regularly to have it with them; but *contra*, if not under ſeal ib

If after jury ſworn, a piece of evidence not under ſeal be by court delivered to jury, it avoids not the verdict ib

So if delivered by a mere ſtranger, if verdict given againſt him, on whoſe behalf delivered ib

If after jury gone from bar, they ſend for a witneſs, who repeats his evidence to them, this appearing by examination, and being indorſed on *poſtea* avoids the verdict; but witneſs may be heard again in open court, and court or parties re-examine him ii. 296, 307

If depoſitions are read in open court to the jury, and as they are going from the bar, ſolicitor for the *king*, without conſent of parties, or order of court delivers copies of them to the jury, if they find againſt him, on whoſe part theſe were delivered, verdict is good; but if for him, and this appears by examination indorſed on *poſtea*, verdict ſhall be quaſhed, and a new *venire* or award for new jury returned ii. 308

After evidence given, where divers written evidences are read on both ſides, and clerk is making up his bundle of evidences under ſeal to deliver to jury, ſolicitor for plaintiff delivers a bundle of depoſitions to jury, ſome whereof were read, ſome not, and on examination this appeared, tho jury ſwore they opened not bundle delivered by ſolicitor, yet verdict for plaintiff for this cauſe avoided (matter being indorſed on the record), and a new *venire* awarded ii. *Page* 308

It might have been a miſdemeanor for jury to have looked into bundle delivered by ſolicitor ib

If party after jury ſworn ſpeak with a juryman of foreign buſineſs, this avoids not verdict after given for him ib

But if he, or any in his behalf ſay to a juryman after his departure from the bar, and before verdict given, *the caſe is clear for plaintiff*, this ſhall avoid verdict, if given for him, for it is new evidence ib

If *A.* be challenged off, and twelve more ſworn, yet *A.* goes with them, and is preſent at their conſultation, if *A.* gives no new evidence, nor intermeddles, verdict good, but *A.* ſhall be fined ii. 309

If one of the indictors be returned on petit jury, and do not challenge himſelf, he ſhall be fined ib

If a jury ſay *they are agreed*, and it being aſked, who ſhall ſay for them, they ſay *their foreman*, but on further inquiry they are not agreed, every one of them ſhall be fined apart ib

If a juryman be called and refuſe to appear, or if having appeared withdraw himſelf before ſworn, fineable ib

So if challenged, and while it is trying he withdraw, and challenge be over-ruled, and he be not preſent to be ſworn ib

If eleven were agreed, and the twelfth refuſed, formerly ſuch juryman hath been fined, and inqueſt taken by the other eleven ib

But both theſe courſes now diſallowed ib

If jury convict againſt reaſon and evidence, or without evidence, and

and againſt direction of court, court may reprieve convict before judgment, and certify *king* for his pardon ii. *Page* 309, 310
Court may reſpite judgment on acquittal, if againſt full evidence ii. 310
In ſuch caſe *king* may have an attaint ib
By ſtatute juſticiar or ſteward, before whom any one is acquit of felony againſt pregnant evidence in *Wales*, or the *Marches* thereof, may bind over the jurors, *&c.* ib
Several inſtances of jurors finding againſt evidence, being fined, but not warranted by law ii. 160, 310 to 314
Where fined for their conſederacy and practice ii. 311
Where in caſe of inqueſt of office jurors not finding according to evidence, have been fined ib
Whether *B. R.* can fine jurors for verdict againſt evidence ib
Jurors to be freemen, regularly freeholders ii. 264
Legales; without any juſt exception ib
De vicineto; but this not ſtrictly required, for they of one ſide of the county are by law *de vicineto* to try an offenſe of the other ſide of the county ib
By antient law, if jurors by miſtake or partiality give their verdict in court, yet they may rectify it before recorded, or go together again and reconſider it ii. 299, 300, 310
If recorded, they cannot retract, or alter it ii. 300
In felony or treaſon no privy verdict can be given ib
For *jury proceſs*. Vide **Trial**.
Vide **Challenge, Verdict**.

Juſtice of Aſſiſe and Ni prius.

Juſtices of aſſiſe are to ſend their records determined into the Exchequer at *Michaelmas* ii. 31
By ſtatute *no man of law* ſhall be juſtice of aſſiſe, where born, or he doth inhabit, but it is uſually diſpenſed with by a *non obſtante* ii. *Page* 32
Whether, by 27 *E.* 1. *de finibus*, they may deliver gaol without any other commiſſion, and give judgment of felons ii. 39, 403
Safe to have a ſpecial commiſſion for that purpoſe ii. 39, 40, 403
In caſe of counterfeiting coin on 3 *H.* 5. they expreſly muſt have a ſpecial commiſſion ii. 40
If indictment in the country had been removed into *B. R.* and priſoner *there* had pleaded *not guilty*, after 27 *E.* 1. and before 6 *H.* 8. the tranſcript of record might have been tranſmitted to have been tried at *niſi prius*, and ſo in appeal ii. 39, 403
Naming them juſtices of *niſi prius* in 27 *E.* 1. is nothing, but the deſcription of their perſons, to whom commiſſions of *gaol-delivery* ſhall be directed ii. 40
Juſtices of *niſi prius* could not at common law give judgment in appeal or indictment ſent them out of *B. R.* by *niſi prius* to be tried, no more than in other ordinary civil cauſes, becauſe they have but tranſcript of record, and their commiſſion is only *ad triandum exitum* ii. 403
In appeals, juſtices of *niſi prius* may inquire of abettors, and give judgment, and if plaintiff nonſuit, arraign priſoner at *king*'s ſuit ii. 41
May allow clergy to a convict of manſlaughter on appeal ib
May by ſtatute proceed to trial and execution on indictment removed by *certiorari*, and ſent down to be tried by them ib
By 14 *H.* 6. have power in all felonies and treaſons to give judgment, and to award execution 350. ii. 403
This ſtatute gives them no power to inquire of abettors in appeal, nor

nor to arraign on a nonſuit before them at *king*'s ſuit *Page* 350. ii. 403

Juſtices of *niſi prius*, *nient obſtante* 14 *H.* 6. may, in caſe of indictment or appeal ſent them out of *B. R.* return *poſtea* into *B. R.* and there judgment may be given as at common law ii. 404

Juſtice of Peace.

They have no juriſdiction in treaſon, except as a felony [which treaſon includes], and as a breach of the peace; they may take examination of traitors, and impriſon them, and take information of witneſſes, and bind them over, and tranſmit theſe examinations and informations to next gaol-delivery, *&c.* 350, 372, 580. ii. 44

They cannot regularly arraign, try, and give judgment in treaſon, unleſs in ſuch caſes, as are by ſpecial *act* committed to their cognizance, becauſe their commiſſion extends not to it 350, 372. ii. 44

Per Rolle, C. J. they may take indictment of treaſon, tho they cannot try it 372

By ſome *acts* may take indictments of particular treaſons, but muſt certify them into *B. R.* or *gaol-delivery* ii. 44

May iſſue their warrants within precincts of their commiſſion for taking perſons charged of crimes within cognizance of ſeſſions, and bind them over to appear there, tho not indicted, notwithſtanding lord *Coke*'s opinion to the contrary 579

Where juſtice of foreign county may grant his warrant, and commit offender; and where offender taken in a foreign county muſt be carried before a juſtice of proper or foreign county, or which of them. Vide **Arreſt.**

If *A.* be in commiſſion of peace in proper county, and happen to be in a foreign county, and complaint is made to him of a felony done in proper county, as he cannot iſſue a warrant to take party, ſo neither can he impriſon in foreign county, becauſe an *act* of juriſdiction; but he may take oath of party robbed in purſuance of 27 *Eliz.* or may take examination or information, or recognizance in foreign county *(ſed quære* of the laſt), but cannot compel them by impriſonment *Page* 581. ii. 50, 51

One is a juſtice in two adjacent counties, tho by ſeveral commiſſions, whilſt he lives in one county, may ſend his warrant to arreſt in the other 580

Convenient, tho not always neceſſary, to take information on oath; if party ſuſpected, then to ſet down cauſe of ſuſpicion 582

When neceſſary or not to bind party to proſecute before warrant iſſued ib

Previous to commitment three things required. 1. Examination of party accuſed, but without oath. 2. Further examination of accuſers and witneſſes on oath. 3. Binding over proſecutor or witneſſes to next aſſiſes, *&c.* 585. ii. 111

Examinations ought to be in writing without oath, and returned or certified to next gaol-delivery, *&c.* and being ſworn by juſtice or clerk to be truly taken, may be given in evidence 585. ii. 52

If juſtice at return of warrant cannot take examination; he may *ore tenus* order officer to detain priſoner till next day, and this detainer juſtifiable without ſhewing particular cauſe, or any warrant *in ſcriptis* ib

Time of detainer muſt be reaſonable 586. ii. 46, 121

Information of proſecutor or witneſſes to be in writing on oath, and returned or certified at next

ſeſſions, &c. and being ſworn by juſtice or clerk, &c. to be truly taken, may be given in evidence againſt priſoner, if witneſſes dead, or unable to travel *Page* 305, 306, 586. ii. 52, 120
Whether juſtices of peace of a foreign county may tranſmit ſuch informations before juſtices, of *gaol-delivery* of proper county 305, 306
If juſtice commit or bail priſoner, he is to take ſurety of proſecutor to proſecute, and of witneſſes to appear and give evidence, and on refuſal may commit them to gaol 585, 586, ii. 121
Eſcapes within their juriſdiction 600
They (*nient obſtante* clauſe in their commiſſion) are not comprized under name of juſtices of *oyer* and *terminer* 686, 687. ii. 23, 44
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Where they may or not proceed ſame ſeſſions againſt party indicted before them ii. 28, 29, 48
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Where they may deliver priſoners by proclamation or not ii. 34, 46
Have power by ſtatute to reform *ore tenus* either pannel of grand or petit jury ii. 36, 155*, 156*, 265
They cannot make out proceſs, when indictment delivered over to juſtices of *gaol-delivery* ii. 37
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Firſt eſtabliſhment of juſtices of peace by 1 *E.* 3. ii. 42, 99
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Juſtices of peace have power by ſtatute to hear and determine murders or manſlaughters, but ſeldom do, or any crime ouſt of clergy, and why ii. 45, 46
Juſtices of peace may take indictment of *ſe defendendo* ii. 45
May take inquiſition touching *felo de ſe*, if not inquired before coroners, it need not be *ſuper viſum corporis*, but is traverſable 414, 419. ii. 46
May by ſtatute proceed on indictment taken before former juſtices of peace in the county, but cannot proceed on indictment taken before commiſſioners of *oyer* and *terminer*, or *gaol-delivery* ii. 46
But by ſtatute indictment taken before ſheriff in his *Turn*, to be delivered to them at next ſeſſions, and they may proceed thereon ib
Commiſſion of *oyer* and *terminer* in the county determines ſecond *aſſignavimus* of commiſſion of peace *ad audiendum & terminandum, quod quære* ii. 47
General commiſſion of peace in county determinies not power of former juſtice by charter, nor of juſtice in a city or corporation parcel of county ib
Where no words of excluſion, juſtice of peace of county have a concurrent juriſdiction with thoſe by charter, and ſo if they be juſtices by commiſſion in town or city ib
King, notwithſtanding charter, may grant commiſſion of peace ſpecially in that city or county, and they will have concurrent juriſdiction with juſtices by charter ib

But

But if franchiſe be granted *itâ quòd juſticiarii comitatûs ſe non intromittant*, tho ſubſequent commiſſion be granted in county at large, they have no juriſdiction in this corporation or town; but *quære*, whether indictment or ſeſſion in the franchiſe be void, or only contempt in juſtices ii. *Page* 47, 48

Seſſions private and public ii. 48

Buſineſs of private, *ale-houſes*, *poor*, *&c.* ib

Public ſubdivided into general quarter-ſeſſions and general ſeſſions ii. 49

Both to be ſummoned by precept in *king*'s name ib

In either of theſe ſeſſions they may proceed in matters within their commiſſion, as to take indictments, try felons, *&c.* ib

By particular *acts* ſome things limited to the quarter-ſeſſions ib

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Are variouſly held in ſeveral counties, and yet good ii. 50

In *Middleſex* regularly but two ſeſſions, yet they may hold quarter-ſeſſions ib

Juſtices to execute their authority as juſtices of peace within county, where juſtices ib

If juſtice live or be out of his county, he cannot by warrant fetch one out of it into county where he is ib

Whether a juſtice, who is ſuch, both in *London* and *Middleſex*, may not commit one in *Middleſex* brought out of *London* and *è converſo* ii. 51

Felony taken in foreign county, juſtice *there* may commit, examine, give oath to informers, and bind them over to give evidence, or commit them for neceſſity of preſerving the peace; but *quære*, whether ſuch examination and informations be evidence on arraignment of felon in proper county 305, 306, 586. ii. 51

Tho by cuſtom of *London* juſtices of *gaol-delivery* ſit at *Newgate*, which is in *London*, both for *Middleſex* and *London*, yet juſtices of peace for *Middleſex* ſit only in that county, and juſtices of peace for *London* there ii. *Page* 51

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If one *ex intentione* do an unlawful *act* tending to bodily hurt of another, as by ſtriking him, tho not with intent to kill him, but his death happens within year and day, or if he ſtrikes at one, and miſſing him kills another, whom he did not intend, it is felony and homicide, and not *caſualty*, or *per infortunium*; ſo it is, if he do an unlawful act, tho not intending bodily harm of any man, as if he throw a ſtone at another's horſe, and it hits a man and kills him 39, 440 472
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By ſame *act* indictment and trial of acceſſaries ſhall be in county, where acceſſary ib
No murder till party dies ib
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But if it be not mortal, but with ill application party dies, if it appear clearly, that the medicine and not wound was cauſe of his death not homicide ib
If not in itſelf mortal, if either for want of applications or neglect thereof, it turns to a *gangrene*, or fever, which proves immediate cauſe of his death, murder, or manſlaughter; wound *cauſa cauſati* ib
One gives a wound to another ſick of a diſeaſe, which by courſe of nature might end his life within half a year, it haſtens his end by irritating the diſeaſe, murder or manſlaughter *Page* 428
If a man by working on the fancy of another, or by harſh uſage put another into ſuch a paſſion of grief or fear, that party dies ſuddenly, or contracts a mortal diſeaſe, tho murder *before God*, yet not ſo *in foro humano* 429
Phyſician or ſurgeon gives a potion with a good intent, it kills patient, no homicide; neither if he be no licenſed ſurgeon or phyſician 429, 430
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If through negligence beaſt goes abroad after warning of his condition, manſlaughter ib
If owner purpoſely let him looſe to do miſchief, or with a deſign only to fright people and make ſport, and it kills a man, murder ib
Laying poiſon to kill rats, a man caſually is poiſoned, no felony ib
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Tho

Tho party take poiſon by the perſuaſion, but in abſence of another, perſuader is principal in the murder *Page* 436, 441, 442, 467

A. gives poiſon to *B.* intending to poiſon him, *B.* ignorantly gives it to another, who dies of it, murder in *A.* but *B. not guilty* 436

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Various inſtances of killing, as by expoſing ſick perſons or infants, *&c.* 431, 432

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If a woman quick with child takes or another gives her a potion to cauſe abortion, or one ſtrikes her, whereby child within her is killed, it is a great miſpriſion, but no felony; ſo it is if ſuch child were born alive and baptized, and after die of the ſtroke given to the mother, not homicide [*ſed quære*]. 433

One counſels her before the birth to deſtroy it, and after child is born, and the woman deſtroys it accordingly, ſhe guilty of murder and procurer acceſſary ib

Killing one attaint of felony, otherwiſe than in execution of the ſentence by lawful officer is murder, or manſlaughter, according to the caſe 497

Homicide to kill one outlawed of felony ib

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5 *Eliz.* makes killing a man attaint in a *præmunire*, murder ib

Killing an *alien enemy* murder, unleſs *flagrante bello* ib

If there be an actual forcing a man, as if *A.* by force take the arm of *B.* and the weapon in his hand, and therewith mortally ſtabs *C.* murder in *A.* but *B. not guilty* *Page* 434

But otherwiſe of a moral force, as by dureſs, *&c.* ib

If *A.* command *B.* to beat *C.* and he beat him to death, murder in *B.* and in *A.* alſo, if preſent; if abſent, acceſſary 435, 440

A. indicted of murder, and *B.* as acceſſary *before* by procurement, *A.* is found guilty only of manſlaughter, *B.* ſhall be diſcharged 437

All preſent and aſſiſting to murder, principals ib

If *A.* is indicted, as having given mortal ſtroke, and *B.* and *C.* as preſent and aſſiſting, and on evidence it appears that *B.* gave the ſtroke, and *A.* and *C.* were only aiding and aſſiſting, it maintains indictment 437, 438

If *A.* lies in wait to kill *B.* and *C.* ſervant of *A.* being preſent takes part with his maſter, and ſervant or maſter kills *B.* murder in *A.* only, homicide in *C.* 437

A. having malice againſt *D.* maſter of *B.* by miſtake aſſaults and kills *B.* the ſervant, or *B.* comes in aid of his maſter, and *A.* kills him, murder in *A.* ib

On indictment of murder, tho party acquit thereof, and convict of manſlaughter, he ſhall receive judgment as if he had been indicted of manſlaughter, for offenſe in ſubſtance the ſame 499, 450, 466

If *A.* and *B.* and *C.* and divers others be engaged in an affray together, and *D.* the conſtable comes to appeaſe it, and *A.* knowing him to be ſuch kills him, and *B.* and *C.* not knowing it comes in, and finding *A.* and *D.* ſtruggling, aſſiſt and abet *A.* in killing the conſtable, murder in *A.* but manſlaughter in *B.* and *C.* but others of them, that did not know him, or abet, are *not guilty* 446

An abettor of murder and homicide muſt be preſent and aſſiſting ib

One procuring or abetting and abſent, only acceſſary in murder *Page* 439

If preſent, and not aiding and abetting to the felony, neither principal nor acceſſary, but looking on without uſing means to take ſelon, a miſpriſion 439, 448, 449, 593. ii. 75. 76

Divers of ſame party come to make an affray, *&c.* and come into one houſe, all are ſaid to be preſent, tho in another room 439

So are they ſaid to be, if they come into one park, tho at a diſtance from each other 465

One ready to aid, tho but a looker on, is a principal 439, 441

Divers come with one aſſent *male faire*, as to rob, kill, beat, or do any treſpaſs, and in doing it one kills a man, all principals 440, 441, 463

If *A.* come in company with *B.* to beat *C.* and *B.* beat him till he die, *A.* is a principal 472

A. and *B.* combat, *C.* comes to part them, *A.* kills *C.* murder in *A.* and *per aſcuns*, in both; but if falling out on a ſudden, then only manſlaughter in him that killed him 441, 442

A. with above thirty entered with force on a manor-houſe, and ouſted *B.* and his family; twenty others on part of *B.* three days after in the night came with weapons in order to re-enter, and one of them caſt fire into a thatcht houſe adjoining to the houſe; whereof one in the houſe ſhot off a gun, and killed one of the party of *B.* manſlaughter 440, 441

A man ſeiſeth goods of an *alien enemy*, and carries them to his houſe; a ſtranger under pretence of being deputy-admiral, with a great multitude came with force to the houſe, and at the gate made aſſault upon thoſe within, a woman iſſuing out, without any weapon, was killed by a ſervant, who came to take the goods, by throwing a ſtone at another in the gate; *per aſcuns*; if the woman came in defenſe of maſter of the houſe, it was murder in vice-admiral and his company; *per autres* no malice againſt the woman, and murder ſhall not be extended farther than intended; *per touts*, manſlaughter *Page* 441, 442

Divers come to commit a riotous, unlawful *act*, if in purſuit thereof one commit murder or manſlaughter, all of that party that committed the diſorder are guilty 442, 443, 463

But in that caſe it muſt be intended, when one of ſame party commits murder, *&c.* on one of the other party, or on thoſe, that come to appeaſe, or part them, or by law to diſperſe them 443

A. and *B.* fight upon premeditation, *A.* takes *C.* for his ſecond, *B.* takes *D.* *A.* kills *B.* murder in *C.* formerly held to be murder in *D.* alſo; but it ſeems otherwiſe 443, 452, 453

If one have no particular malice againſt any individual man, but comes with a general reſolution againſt all perſons, if *act* be unlawful, and death enſue, it is murder; as if it be to commit a riot, or enter into a park 444, 445, 466

A. and divers others come together to commit a riot, and in their march *A.* meets with *D.* with whom he had a former quarrel, or by reaſon of ſome collateral provocation given by *D.* to *A.* *A.* kills him without any abetting by his company, they not principals in the murder or manſlaughter 443, 444

Where many came to commit a diſſeiſin, and one killed, all the company arraigned as principals, and condemned; but it ſeemeth to be only manſlaughter 444

If many come together on an unlawful deſign, and one of the company

company kills one of the adverſe party without abetment of the reſt to the homicide, none guilty, but thoſe that gave the ſtroke, or actually abetted *Page* 444
Many come to remove a nuiſance committed in the highway, they are oppoſed by divers others, one of the former party ſtrikes one of the latter ſuddenly, and kills him without abetment of the reſt, he who ſtrikes is guilty of manſlaughter, reſt *not guilty* without abetment ib
But if it had been no nuiſance, reſt had been guilty 444, 445
If *A.* hath good title to his houſe, or be in poſſeſſion for three years (in which caſe he may detain by force by 8 *H.* 6.) if any perſon come to rob or kill him, and he ſhoot and kill him, no felony, nor forfeits he his goods, as in caſe of homicide *ſe defendendo* 445
But if *A.* come to enter with force [being ouſted], and in order thereto ſhoot at his houſe, and *B.* the poſſeſſor having other company in his houſe ſhoots and kills *A.* manſlaughter in *B.* ib
In this caſe, if *B.* ſhoot out of his houſe and kill *A.* not felony in the reſt of the houſhold; nay, tho he had hired an extraordinary guard (as by law he might), yet this not manſlaughter in the reſt of the company, becauſe aſſembly lawful ib
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and he runs three quarters of a mile, beats the other child, and kills him, manſlaughter *Page* 453
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within the juriſdiction of the juſtice, murder; ſuch private man muſt ſhew his warrant, or ſignify the contents *Page* 459

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